

Topic Covered:

Sem - IV

~~IIrd year~~

Paper - C-9 (Indian  
Gov. & Politics) -

Unit -  
06

The Judiciary:  
Supreme Court &

IIrd year

High Courts -  
Composition & function

IIIrd year

Study material  
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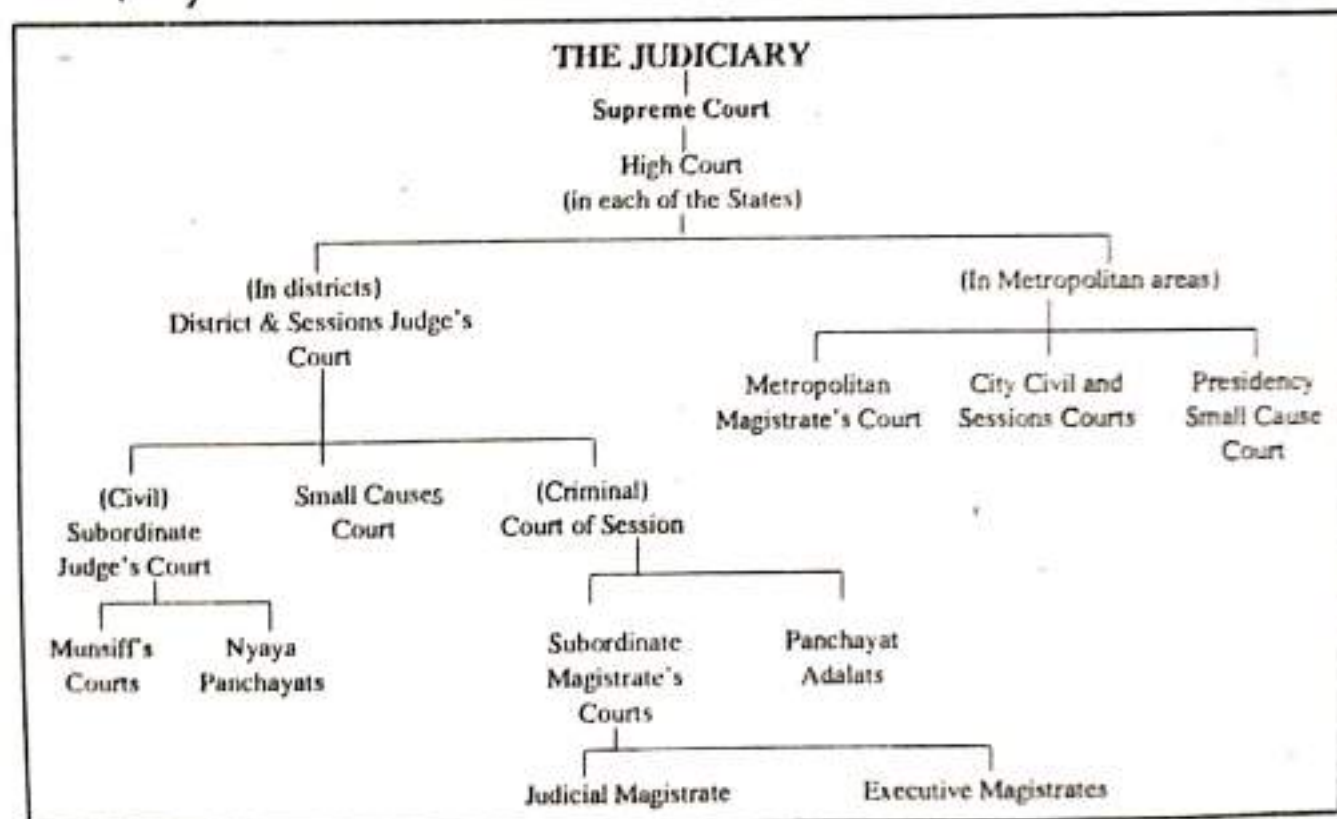
## 5.16. Indian Judiciary

In India there is an integrated and unified judiciary for the whole country. In the U.S.A. there are separate judicial systems for the States and the Union. But in India the whole country has only one system. The Indian judiciary is organized pyramidally.

At the bottom there are numerous Nyaya Panchayats and at the apex there is the Supreme Court. In between these there are various other Courts — Munsiff's Courts, District Courts and High Courts.

The Indian Courts of adjudication are divided into two groups — Civil Courts and Criminal Courts. The Courts that deal in general with disputes regarding land, property and other such things are called *Civil Courts* and those that deal with murder, arson, riot, looting, etc. are called *Criminal Courts*.

There are three sets of Courts — Subordinate Courts, High Courts and the Supreme Court at the apex.)



## 5.17/ The Supreme Court of India

In a federal system of government the political power is divided between the Centre or the Union and the States. The federal structure is a mixed structure, by and large. So there may well be disputes between the Union and the States with regard to the division and exercise of powers. In a federal system both the Union and the States derive the powers from the



Constitution, but disputes are still very likely (and in fact they sometimes do occur) between the Union and the States or between the States.

So it is imperative that some kind of a supreme, independent and impartial Judicial Institution must be there to decide, settle and interpret the Constitution. The authority of this supreme Institution must not be disputed. This implies that the disputants must accept the interpretation given by such Institution. The Supreme Court of India is such an Institution. It has great authority — so great in fact, that it is at once a Federal Court, a Court of Appeal and a Guardian of the Constitution. The question of law decided by the Supreme Court is binding on all other Courts within the territory of India.

### 5.17.1. Composition of the Supreme Court.

Article 124 of the Constitution says : *There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number of not more than seven (now 25 under Act 22 of 1986) other Judges.*

According to the original provision of the Constitution the Supreme Court was to have a Chief Justice and not more than seven other Judges. The Constitution provides that this number can be increased by Parliament by enacting necessary law. Parliament by a special Act of 1956 increased the number to ten and by another in 1960 to thirteen. The Act 22 of 1986 increased the number. Accordingly, now the Supreme Court consists of the Chief Justice of India and not more than twenty five other Judges.

Every judge of the Supreme Court is appointed by the President of India. The President shall, in this matter, consult other persons besides taking advice of the Council of Ministers.

The Chief Justice of the Supreme Court is appointed by the President in consultation with the Union Council of Ministers. In appointing the other Judges the President relies on the advice of the Chief Justice of the Supreme Court. The President shall also consult such other Judges of the Supreme Court and High Courts as he may deem necessary for the purpose. The Chief Justice of the Supreme Court may, with the President's permission, appoint an Adhoc Judge and also may appoint a retired Supreme Court Judge to act as a Judge of the Supreme Court for a temporary period.

### 5.17.2. Qualifications of the Judges

A person shall not be qualified for appointment as a Judge of the Supreme Court unless his is (a) a citizen of India, and (b) either (i) a distinguished jurist; or (ii) has been a High Court Judge for at least 5 years; or (iii) has been an Advocate of a High Court (or two or more such Courts) for at least ten consecutive years; or (iv) is, in the opinion of the President, a distinguished jurist.

No minimum age limit has been fixed for the Judges of the Supreme Court in our Constitution, but once appointed the Judges continue in office till the age of sixty-five years.

### 5.17.3. Removal of the Judges

A Judge of the Supreme Court cannot be removed before they have attained that age. Only if the judge himself submits his letter of resignation, or, if a proposal for removal on ground of proved misdemeanour or incapacity is passed by a special majority in both the Houses of Parliament, then the President can issue an order for his removal.

### 5.17.4. Salary and Allowance

The salary and allowances of the Judges are determined by the Constitution and the Parliamentary Act. On the basis of the High Court and Supreme Court Judges (conditions of



service) Amendment Bill, 1998, the Chief Justice of Supreme Court gets a monthly salary of Rs. 33,000 and the other Judges Rs. 30,000 each. This salary is charged on the Consolidated Fund of India.

### 5.17.5. Independence of the Judges

In our country, some measures have been devised to ensure the independence of the Judges of the Supreme Court.

**First**, once appointed, the judges continue in office till the age of 65 years.

**Second**, a judge of the Supreme Court cannot be removed from his office except on a joint address by both Houses of Parliament on ground of proved misbehaviour or incapacity. A Judge of the Supreme Court can be removed by the President upon a resolution to that effect, passed by a majority of the total membership and a majority of not less than two-thirds of the members present and voting in each House of Parliament.

**Third**, the salaries of the judges are charged on the Consolidated Fund of India so that it does not depend on the voting of Parliament.

**Fourth**, it has been provided in the Constitution that salary, allowances and pension of the Judges shall not vary to the disadvantage of a judge during his term of office. Only in times of financial emergencies President can cut down the salary of the Judges.

**Fifth**, there can also be no change in the rights, power and privileges of the Judges after they are appointed.

**Finally**, the independence of the Judges of the Supreme Court has been ensured by laying down that after retirement a Judge of the Supreme Court shall not plead or act in any Court or before any authority within the Indian territory.

### 5.17.6. Jurisdiction, Functions and Powers of the Supreme Court

In most federal States, the federal Courts and the Courts of the federated States are more or less independent. In the United States, for example, the Judicial system has two clear-cut divisions — the Federal Judiciary of the State. But India has a united and integrated judiciary whose structure is pyramidal. The Supreme Court stands at the apex of this pyramid. Naturally, the powers of the Supreme Court are quite enormous. The Constitution refers to three kinds of jurisdictions of the Supreme Court, namely, Original, Appellate and Advisory.

#### As a Court of Original Jurisdiction

Article 131 of the Constitution enumerates the original jurisdiction of the Supreme Court. It vests the Supreme Court with Original and exclusive jurisdiction to determine justiciable disputes between the Union and the States or between the States. If there is any dispute between the Union and one or more States, or between two or more States, with regard to restriction or enlargement of powers, or any constitutional question, the matter falls within the original jurisdiction of the Supreme Court. Such disputes cannot be taken to any other Court of law in India.

Secondly, the Supreme Court is the protector of the fundamental rights of the citizens. So the Supreme Court has the jurisdiction to entertain an application under Art 32 for the issue of constitutional Writs in the form of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari for the enforcement of Fundamental Rights.

Any dispute regarding these rights comes within the original jurisdiction of the Supreme Court; of course, the State High Courts, too, have been given some powers in this respect.



There are certain limitations to the Supreme Court's original jurisdiction: (a) terms of treaties or charters in which a Federated State is involved, inter-state water dispute, and the financial matters sent to Finance Commission for settlement are beyond the original jurisdiction of the Supreme Court; (b) even in respect of the fundamental rights only the legal aspects are within the Supreme Court's jurisdiction. It has nothing to say about the administrative or political disputes.

### B. As a Court of Appellate Jurisdiction

The appellate jurisdiction of the Supreme Court is of three kinds: (a) constitutional appeals, (b) appeals regarding civil cases; (c) appeals regarding criminal cases.

(a) **Constitutional appeals** : Any appeal against the judgement of the High Court is possible in the Supreme Court if the High Court issues a certificate to the effect that in the particular case some important constitutional questions are involved. Of course, the Supreme Court may grant special leave of appeal even if the High Court refuses to issue such a certificate.

(b) **Civil appeals** : An appeal shall lie to the Supreme Court if the High Court certifies (i) that the case involves a substantial question of law, (ii) that in the opinion of the High Court the case needs to be decided by the Supreme Court. Moreover, the party concerned may appeal on the ground that a substantial question of law has been wrongly decided.

(c) **Criminal appeals** : In criminal cases appeals from the High Court are possible to the Supreme Court if the High Court after re-trial lifts the death sentence in a particular case, or takes up a case in the midst of its trial in a lower Court and sentences the accused with death or certifies that the case is so important that the Supreme Court should reconsider it.

According to the Constitution (Article 136), the Supreme Court can enlarge its appellate jurisdiction. The Supreme Court can grant special leave of appeal from any other Court than the Tribunals specially set up for the Defence Army. Again, under Article 138, Parliament can enlarge the jurisdiction of the Supreme Court in respect of any subject included in the Union List and in respect of any other subject with the consent of the States.

### C. Advisory Jurisdiction

The Supreme Court's Advisory jurisdiction has been discussed in Article 143 of the Constitution. On any question of law or fact of public importance the President may seek the advice of the Supreme Court. The Supreme Court is not bound to give advice. Again, there is no clear indication in the Constitution whether the President is bound to accept the advice of the Supreme Court. According to Shri D.D. Basu, the opinion of the Supreme Court is only advisory and the Government is not bound to act in conformity with the opinion so received.

### D. Miscellaneous Jurisdiction

Finally, some other powers of the Supreme Court may be mentioned.

(i) **The Supreme Court is a Court of Record** : It means that the decisions of the Supreme Court must be accepted by all other Courts in India. The verdicts of the Supreme Court shall be upheld and accepted by all High Courts and Lower Courts as precedents. The decision of the Supreme Court is regarded as law. Of course, the Supreme Court can, if it thinks it necessary, alter its earlier decision.

(ii) **Appeals under the People's Representation Act** : Such appeals also lie to the Supreme Court.

(iii) **Supreme Court as the interpreter of the Constitution** : The interpretation of the constitution which the Supreme Court shall offer must be accepted by all.

All civil and judicial authorities are bound to assist in the work of the Supreme Court.



### 5.18. Role and place of the Supreme Court

The Supreme Court was shorn of some of its important powers by the *42nd Amendment Act*. Those, however, were restored again by the *43rd and 44th Amendment Acts*.

The position of the Supreme Court is vital in our judicial and political system. The primary duty of the Supreme Court is to ascertain whether the laws are executed and obeyed properly and to see whether any person is deprived of justice in any Court of law. With this purpose in view, the Supreme Court has been given the highest place in our unitary judicial system. Attempt has been made, as far as possible, to ensure its independence and for the achievement of the goal of ensuring justice. The Supreme Court has been equipped with enormous powers. By virtue of its place at the apex of the judicial pyramid, the Supreme Court acts as a great unifying force. We have seen that its decisions and verdicts are binding on any Court in India. As a result, there is a good possibility of integration, consistency and cohesion in the entire judicial system of the country.

The role and place of the Supreme Court in our judicial and political system may be discussed under the following heads.

#### 1. As a Federal Court

Supreme Court is the Federal Court of India. India being a federation, powers are divided between the Union and State governments. The Supreme Court of India is the final authority to see to it that the division of powers in the constitution are obeyed by both the Union and the State governments. So *Article 131* rests the Supreme court with original and exclusive jurisdiction to determine the justiciable disputes between the Union and the States or between the States.

#### 2. Interpreter of the Constitution

The great responsibility of interpreting the Constitution rests on the Supreme Court. The interpretation of the Constitution which the Supreme Court shall make must be accepted by all. It interprets the Constitution and it preserves the Constitution; and it is, in fact, the guardian of the Constitution.

#### 3. Guardian of the Constitution

The Supreme Court of India is the guardian of the Constitution.

There are two points of significance of the Supreme Court's rule as the protector and guardian of the Constitution.

First, as the highest Federal Court, it is within the power and authority of the Supreme Court to settle any dispute regarding division of powers between the Union and the States. Secondly, it is in the Supreme Court's authority to safeguard the fundamental rights of the citizens.

In order to discharge these two functions it is sometimes necessary for the Supreme Court to examine or review the legality of the laws enacted by both the Union and the State Governments. This is known as the Judicial Review. The power of Judicial Review empowers the Courts to invalidate laws passed by the Legislature.

#### 4. Writ Jurisdictions : Enforcement of Fundamental Rights

Under Article 32 of the Constitution the Supreme Court can issue Writs for the enforcement of Fundamental Rights. These Writs are in the nature of *Habeas Corpus*, *Mandamus*, *Prohibition*, *Quo-warranto* and *Certiorari*.



### 5. Power of Judicial Review and Supreme Court

It will now be worthwhile to tell a few words about what the Judicial Review really means. The power of Judicial Review empowers the Courts to invalidate laws passed by the Legislature. In France, the former Soviet Union, Great Britain and Switzerland, for example, the Constitution expressly states that the Judiciary (in those countries) cannot interpret the Constitution. The legality of the laws which the Legislature introduces in those countries cannot be disputed or challenged. But the Supreme Court of the U.S.A. has been given the supreme authority of interpreting the Constitution of the country. There *the Constitution comes to mean what the Court says it means*. Chief Justice Charles Evan Hughes of the U.S.A. once said in this context: *We are under constitution, but the constitution is what the judges say it is.*

Supreme Court of India also enjoys the power of Judicial Review. *Art 13* declares that any law which contravenes any of the provisions of the part on Fundamental Rights, shall be void. If it occurs to the Supreme Court that any law enacted by Parliament or by a State Legislature curbs or threatens to curb the citizen's fundamental rights, the Supreme Court may declare that law as unlawful or unconstitutional. If any law is inconsistent with the spirit or letter of the Constitution and if the Government oversteps the legal bounds it is for Supreme Court to see to it. As already stated, the power of the Judiciary to examine the validity of such law is called Judicial Review.

#### Power of Judicial Review not absolute

In the U.S.A. the power of judicial review is very great indeed, so much so that many of the progressive laws passed by the U.S Congress have been invalidated by the U.S. Federal Court. The conservatism of the Judges and their political prejudices are quite often seen to stand in the way of new and progressive legislation. The Supreme Court of India, too, declared the abolition of the Zamindari system as unconstitutional. Judicial review tends to restrict the authority of the Legislature. In view of this in our country certain safeguards are provided by the Constitution. The power of Judicial Review enjoyed by the Supreme Court of India is not so wide — it is limited and not absolute.

#### Evaluation

(The role of the Supreme Court of India as the guardian and interpreter of the Constitution can hardly be underestimated. The Supreme Court watches whether the Union and the Units in the federal system work properly in their respective areas. Any unconstitutional measure may interfere with or infringe upon the rights of the citizens. So the Supreme Court guards against such an eventuality. Thus the Supreme Court acts as the guardian of the federal Constitution. Its interpretation of the Constitution is final.)

(According to many jurists the Supreme Court of India is the strongest federal Court. Shri Durga Das Basu has commented that the jurisdiction and powers of our Supreme Court are in their nature and extent wider than those exercised by the highest Court of any other country.)

(We can, however, conclude that the Supreme Court occupies important position in our constitutional system. It holds Legislature in check, prevents the Union and State Governments from encroaching into one another's spheres, safeguards the fundamental rights of the citizens.) In other words, the Supreme Court of India acts as the guardian of the Constitution (It is generally believed that the Supreme Court of India is more powerful in several spheres than its American counterpart.) This is why Sir Alladi Krishnaswami observes that the Supreme Court of India has more powers than any other Supreme Court in any part of the world. But it must be admitted that the Supreme Court of India does not enjoy so much power of Judicial Renew as enjoyed by the American Supreme Court. Supreme Court of India does not possess absolute power of Judicial Review, it enjoys limited power of judicial Review.

## 6.11. High Court of a State

According to *Article 214* of the Constitution there shall be a High Court for each of the States. Of course, *Article 231* of the constitution empowers the Parliament so set up one High Court for two or more States. For example, Gauhati High Court has jurisdiction over the State of Tripura and some other States of north-east India besides its its jurisdiction over the state of Assam<sup>1</sup>. For the State of West Bengal there is the Calcutta High Court. This Court is the highest Court in the State. There are over 511 judges in 18 High Courts in India!

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1. In 1972 by the State Reorganization Act, the Parliament decided that there shall be one Governor and one High Court for Meghalaya, Manipur, Tripura, Nagaland and Assam, (to be situated at Gauhati) as their common High Court.



### Composition of High Court

A High Court is composed of a Chief Justice and as many other judges as the President of India may from time to time deem it necessary to appoint. The President can appoint additional judges also for a maximum period of two years. Ordinarily, the judges remain in office till the age of sixty two. In appointing the Chief Justice of High Court, the President consults the Governor and the Chief Justice of the Supreme Court. In appointing the other judges the President consults the Chief Justice of the Supreme Court and the Chief Justice of the High Court.

### Appointment, Transfer and qualifications

Though the judges of the High Court can remain in office till the age of sixty two, the judges may resign from their posts prematurely by applying in writing to the President. Besides, the judges of a High Court can be removed from office on various grounds like misdemeanour and corruption. The Judge of a High Court may be transferred to another High Court or promoted by the President to the higher rank of judgeship of the High Court of another State or Supreme Court. The judges of the High Court must be Indian citizens and must have behind them ten years' experience in adjudication or in legal practice in one or more High Courts.

### Removal of judges

To ensure the independence of the Judiciary, a special mode of removal of the judge has been prescribed in the Constitution. The proposal of removal must be passed by a two-thirds majority of the members present in the Legislature. The proposal then shall have to be sent to the President for his assent. The President will then ask the judge to resign. But this is very difficult in practice. Thus there is very little uncertainty about the service of the High Court judges.

### Salary

The salary of the judges of the High Court cannot be put to vote in the Legislature. The State Legislature cannot make any change in the Constitution and organization of the High Court. The salary of the High Court Judges is fixed by the Constitution and the Parliamentary Act. The Chief Justice of a High Court gets a salary of Rs.30,000 a month and the other judges get Rs.26,000 a month. According to the constitution and the parliamentary law, their allowances, leaves and other privileges also are fixed so that they cannot be changed by the State Legislature.

### Jurisdiction and Functions

The High Courts act as the Court of Original Jurisdiction and the Court of Appellate Jurisdiction at the same time. As a Court of original jurisdiction the High Court can try original cases. The constitution has vested the High Court with power of trying revenue cases also. This had been until a few years ago beyond the High Court's jurisdiction.

The High Court of every State is the highest court of appeal in respect of all criminal and civil cases of the State. The High Court hears appeals in respect of any criminal or civil case decided by the lower court of the State. If the High Court thinks that some very important constitutional or legal questions are involved in a case which a lower court is trying, it (the High Court) may come forward of its own and take up the case. Such a case is transferred to the High Court. The High Court may either give its verdict on the constitutional point only and leave it to the lower court concerned to pass verdict on the other issues or try the case as a whole.

The Union Parliament has been empowered to either enlarge or restrict the jurisdiction of



the High Court. Apart from the aforesaid power, the High Court has (according to *Article 227* of the Constitution) the power of superintendence over all the lower Courts of a State except the Military Tribunals. To safeguard the fundamental rights of the citizens, the High Court can issue various Writs in the nature of *Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari*. Besides, the High Court has the authority of making laws regarding the appointment of its own officials and other internal affairs.

As the head of the judiciary in the State, the High Court has got administrative control over the subordinate judiciary in the State.

The High Court is a Court of Record. This means that all records regarding all cases that come to the High Court are kept with the extreme care possible and these records are later referred to in dealing with other cases. If a person makes any statement about the court contemptuously, the High Court as a Court of Record will punish him.

The *42nd Amendment Act of 1976* curtailed jurisdiction of the High Courts in various spheres. The *44th Amendment Act of 1979*, however, restored the original jurisdiction and position of the High Courts.

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